

ORDINANCE NO. 2366

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 37.516 ACRES, MORE OR LESS (Tax Map I.D. 334-18.00-40.00 - no 911 address available)

WHEREAS, on the 8th day of November 2013, a zoning application, denominated Change of Zone No. 1742 was filed on behalf of Seaside Communities, RDC, LLC; and

WHEREAS, on the 13th day of February 2014, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 22nd day of May 2014, said Planning and Zoning Commission recommended that Change of Zone No. 1742 be approved with conditions; and

WHEREAS, on the 18th day of March 2014, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE,

THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential District] and adding in lieu thereof the designation MR-RPC Medium Density Residential District – Residential Planned Community as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying at the northeast corner of Route 24 (John J. Williams Highway) and Tanglewood Drive, a private street providing access to Briarwood Estates Subdivision, and also being 0.6 mile southwest of Road 284 (Mulberry Knoll Road) and being more particularly described per the attached legal description prepared by Solutions IPEM, LLC.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

This Ordinance was adopted subject to the following conditions:

- A. The maximum number of residential units shall not exceed 81 units.**
- B. Site Plan review shall be required for each phase of development.**
- C. All entrance, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's requirements, or in accordance with any further modifications required by DelDOT.**
- D. As proffered by the Applicant, recreational facilities and amenities shall be constructed and open to use by residents of the development within 2 years of the issuance of the first building permit. These recreational facilities shall include a tot lot, swimming pool, and bath house.**
- E. The development shall be served as part of the West Rehoboth Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.**
- F. The MR/RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.**
- G. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices (BMPs). The Final Site Plan shall contain the approval of the Sussex Conservation District.**
- H. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. As proffered by the Applicant, the street design shall include sidewalks on both sides of the streets and street lighting.**
- I. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed street and shrub landscape design.**
- J. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.**

- K. The Applicant shall cause to be formed a homeowners or condominium association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities, and other common areas.
- L. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State permits. The wetland areas shall be clearly marked on the site with permanent markers.
- M. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2366 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 30TH DAY OF SEPTEMBER 2014.



ROBIN A. GRIFFITH
CLERK OF THE COUNCIL

The Council found that the Change of Zone was appropriate legislative action based on the following Findings of Fact:

- A. This is the application of Seaside Communities RDC, LLC to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 37.516 acres, more or less, land lying at the northeast corner of Route 24 (John J. Williams Highway) and Tanglewood Drive, a private street providing access to Briarwood Estates Subdivision. (Tax Map I.D. 3-34-18.00-40.00)
- B. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the Goslee Creek Planning Area; that wastewater capacity is available for the project; that Ordinance 38 compliance will be required; that sewer service has not yet been extended to the Goslee Creek Planning Area, and that a connection point will be determined at a later date; that the project is capable of being annexed into the sewer district pending the completion of the Goslee Creek Planning Study; that conformity to the Goslee Creek Planning Study will be required; that the project is located in the Goslee Creek Planning Area for sewer service, and the County has undertaken a planning study to determine how service to the Planning Area will be provided; that the proposed project is included as a priority project in the Study, and a means for providing service will be included as a work item; that upon completion of the Study, the County Engineering Department expects to recommend a sewer district expansion to include the parcel; that the County requires design and construction of the collection and transmission system to meet County sewer standards and specifications; that the County Engineer must approve the connection point; that a Sewer Concept Plan must be submitted for review and approval prior to design of the sewer system; that a checklist is provided for preparing concept plans; that one time system connection charges will apply; and that a Concept Plan is required.
- C. The Council found that Eugene Bayard, Attorney, was present on behalf of the Applicant with Frank Kea and Jason Palkewicz of Solutions IPeM; Derrick Kennedy with Rybinski Engineering; Ed Launey of Environmental Resources, Inc.; and the developers, Dan and Mark McGreevy and stated that the site is adjacent to

Briarwood Estates Subdivision and Hart's Landing Residential Planned Community, the proposed Cape Henlopen School site, the proposed State Police Troop 7 site, and a proposed EMT facility; that the entrance to the property is at the current entrance to the Windswept Farm; that the topography of the site is fairly dramatic; that the homes would be organized so that they are running generally downhill from front to back; that the application is a proposal for 115 homes; that it is proposed as a Residential Planned Community; that a Traffic Impact Study (TIS) has been done and was paid for by the developer by paying into the fund and DelDOT's consultant did the traffic study; that the TIS letter, with recommendations for improvements, was issued; that the developer is participating in the improvements to Route 24; that the project is in an Investment Level 2 Area; that the site is located within the low to medium density area of the Comprehensive Plan and is in the Environmentally Sensitive Development Area; that the design of the project does not disturb any wetlands, the Hetty Fisher Pond, or any woodlands; that a clubhouse, pool, tot-lots and picnic areas, and other recreational features are planned; that sidewalks are proposed on both sides of the streets; that buffer landscaping will be provided along those perimeter areas that are not currently wooded; that a portion of the existing barn on the property may be converted into the clubhouse; that Hart's Landing, The Retreat, and the Reserves at Lewes Landing are some of the Residential Planned Communities in the area; that the project is designed for single family detached condominium units, which provides for a maintenance company maintaining the grounds, open spaces, common areas, etc.; and that the proposed units will be similar to units in Ellis Point near Bethany Beach, The Avenue on Rehoboth Avenue Extended, and Nassau Grove near Red Mill Pond.

- D. Council found that DelDOT has performed a study of the area and determined specific road entrance and intersection improvements in the area, including lanes, bus stops, bicycle paths, etc. at the developers expense; that the site has been largely developed as a horse farm with pastures, riding rings, barns, stables, and out buildings; that it is not the developers intent to disturb any of the existing wetlands or woodlands; that all proposed improvements will be located in the already disturbed areas; that a wetland delineation has already been performed and submitted to the Army Corps of Engineers; that there are no federally listed endangered species reported to be on this site; that all street and urbanized run-off will go to the proposed stormwater pond on the site; that the site contains 37.5 acres which would allow for up to 151 units; that 115 units are proposed at a density of 3.3 units per acre; that there will be 15 acres of open space, including the ponds, tot lots, preserved wetlands and woodlands; that central sewer will be provided by the County; that central water will be provided by Tidewater Utilities; and that all stormwater will be maintained on site.
- E. Council found that this is an infill project surrounded by other existing and proposed projects; that the application is consistent with the development trends in the area; that Route 24 improvements will be funded by the developer and the Federal government; that DelDOT has reported that this project is consistent with the Strategies for State Policies and Spending and the Sussex County Comprehensive Plan Update for 2008; that some filter strips will be created and will provide for improved runoff quality on the site; that the site has a lot of changes in the topography, but contains well drained soils; that no formal phasing plan has been proposed; that they anticipate that the site will be developed in two phases; that the larger stormwater pond in the center of the project will remain wet and will flow to the small wetland area in the southwest corner of the site to a culvert under Route 24; that the HOA (Homeowners Association) documents can include reference to signage for designating the wetlands boundaries; that it has not been determined if they will provide a central postal system at the clubhouse or install a series of mail receptacles; that the design of the project works around the existing topographic features of the site; and that the perimeter buffers will be maintained with at least a 20 foot wide landscaping as provided in the Subdivision Ordinance.
- F. Council found that the project has gone to PLUS and a PLUS response has been prepared; that there were no significant issues in the PLUS response; that the proposal has been through the Technical Advisory Committee (TAC) and the Committee's comments can be addressed and resolved; that one comment in the TAC comments was from DNREC in regards to the large pond on the site; that

stormwater management is not 100% designed yet and that will be done with the Sussex Conservation District in accordance with current regulations; that the water will have to be treated in alternate ways before it gets to the pond; that TAC commented that they will need to do alternate BMPs (Best Management Practices) which they will; that there is no concern about the capacity in the pond – that the level will be maintained; that no activities are planned in the wetland areas; that the proposal is consistent with the character and trend of development in the area; that there is a clear and rising demand for residential housing in this area; that there will be no adverse impact on the area; that DelDOT confirms that the proposed development is in Level 2 and is consistent with the State Quality of Life Act; and that DelDOT states that it is consistent with the County's Comprehensive Plan.

G. Based on the Findings (1 through 9) and Conditions (A through M) of the Planning & Zoning Commission, Council found that:

- 1. The proposed MR/RPC project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Development District as established by the Comprehensive Land Use Plan.**
- 2. Under the current AR-1 Zoning with the cluster option, the site could be designed and developed to 81 lots. The developer is apparently seeking the MR/RPC zoning designation to accomplish a development of single family style condominium units. The RPC density should remain consistent with the prior density.**
- 3. The development of this site at 81 units is consistent with the densities of surrounding RPCs and other developments, including Hart's Landing, Briarwood Estates, and the Retreat at Love Creek.**
- 4. The project is within a Developing Area according to the Sussex County Comprehensive Land Use Plan.**
- 5. Sewer service will be provided as part of a County operated Sanitary Sewer District, and adequate wastewater capacity is available for the project.**
- 6. Central water will be provided to the project.**
- 7. With the conditions placed upon this project, the RPC designation is appropriate for this parcel of land in that the purpose of an RPC is to encourage large scale development as a means to create superior living environments and the use of design ingenuity. This development, in a single family condominium format achieves this goal. The design also retains a great deal of open space and protects wetlands.**
- 8. DelDOT has performed a study of the area where this development is located and has determined specific road entrance and intersection improvements in the area, including additional lanes, intersection and roadway improvements, bus stops and other improvements. The developer will be required to contribute to the overall costs of the area roadway improvements in addition to actual roadway improvements along Route 24 near the development and its entrance. All of these improvements will be beneficial to Route 24.**
- 9. Based on the record, recommendation and findings of the Planning & Zoning Commission and the record created before Council, the Council approved this application subject to thirteen (13) conditions (A – M).**